

REMARKS

Please not the change docket number above. The old docket number was 12513 and the new docket number is 0150329.

Claims 2-15 are pending in this application and claim 16 is added. Claims 2-15 are rejected. Claim 16 is directed to subject matter that the Applicants are entitled to. Support for claim 16 is found in the Figures. Reconsideration and withdrawal of the rejections set forth in the last Office Action, as they may apply to the claims as set forth, is respectfully requested in view of the remarks set forth herein.

Claims 2-15 are rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 1,451,095 to Greene (Greene) in view of U.S. Patent No. 5,970,525 to Gallinot et al. (Gallinot). This rejection is respectfully traversed.

In order to prove the obviousness of a combination, the prior art references must be considered in their entirety, *i.e.*, as a whole, and must suggest the desirability and thus the obviousness of making the combination. Hodush v. Block Drug Co., Inc., 786 F.2d 1136, 1143 n. 5, 229 USPQ 182, 187, n. 5 (Fed. Cir. 1986) and MPEP 2141.01(a). The mere fact that references can be combined or modified does not render the resultant combination obvious unless the prior art also suggests the desirability of the combination. In re Mills, 916 F.2d 680, 16 USPQ2d 1430 (Fed. Cir. 1990) and MPEP § 2143.01

When considered in their entirety, Greene and Gallinot do not suggest the desirability of making the combination. Rather, Greene and Gallinot teach against such a combination. For example, Greene teaches that “the legs of the wearer are wholly free and are not subject to any restraint but what is vital is effectively protected” (col. 2, ln. 112 – col. 3, ln. 3). Looking at the Figures of Greene, we see that the lower half of the leg below the knee, the ankle area, and the entire foot are uncovered. Therefore, Greene teaches that these areas, in particular the entire foot and ankle areas, are not vital and need not be protected. There is no suggestion or motivation in Greene, consequently, to make the combination.

Gallinot, on the other hand, is entirely focused on protecting the lower legs, hence its title “Leg Guard Apparatus.” Gallinot states that “this invention is specifically designed to counteract the effects of mechanically propelled debris against the user’s lower leg” (col. 1, ln. 66 – col. 2, ln. 1). Further, “[i]n the preferred embodiment of the invention illustrated in FIGS. 1 and 2, the length of the cover member 20 is chosen to extend from just above the user’s knee to just behind the toe portion of the user’s footwear” (col. 2, lines 59-62). Even in the alternate embodiment discussed, the cover member 20 only extends to mid-thigh. It

follows then that Gallinot only teaches protecting the lower leg area. Consequently, there is no suggestion or motivation in Gallinot to make the combination.

Since neither reference cited provides any suggestion of a desirability of making the combination, claims 2-15 cannot be rendered obvious by Greene and Gallinot.

Furthermore, the Applicants submit evidence, in the form of a rule 132 declaration by William K. Letson (the "Letson Declaration"), that they have achieved commercial success with the claimed invention. As described in the Letson Declaration, the Applicants have sold over 400 units of the claimed invention in the past few years. The Applicants have not advertised the claimed invention. The Applicants achieved their commercial success despite having devoted very little time to selling the claimed invention. Consequently, these sales have been entirely due to the inventive qualities of the claimed invention. This commercial success is further proof that claims 2-15 are not rendered obvious.

In view of the above, Applicants respectfully request reconsideration and withdrawal of the rejection of claims 2-15 under 35 U.S.C. § 103(a).

Claim 16 is not rendered obvious by Greene and Gallinot for at least the same reasons as given above for claim 15. Additionally, claim 16 is allowable because the cited references do not teach or suggest the feature that the "foot covers ... extend over the toe portions of the feet of the user," as in claim 16. Specifically, Gallinot teaches that "...the length of the cover member 20 is chosen to extend from just above the user's knee to *just behind the toe portion* of the user's footwear" (col. 2, lines 60-62). Therefore, claim 16 is allowable.

CONCLUSION

In view of the above amendments and remarks, Applicants believe that all of the objections and rejections against this application have been fully addressed and that the application is now in condition for allowance. Therefore, withdrawal of the outstanding objections and rejections and a notice of allowance for the application is respectfully requested.

If the Examiner believes that a personal or telephonic interview would be of value in expediting the prosecution of this application, the Examiner is hereby invited to telephone the undersigned counsel to arrange for such a conference.

Respectfully submitted,



Date: **December 29, 2003**

Sean Wooden
Reg. No. 43,997
ANDREWS & KURTH LLP
1701 Pennsylvania Avenue, N.W.
Suite 300
Washington, D.C. 20006
Telephone: (202) 662-2738
Fax: (202) 662-2739

12/29/2003 MON 14:39 FAX

002/003

Docket No. 0150329

PATENT



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: William K. LETSON, et al.

Serial No. 09/577,751

Examiner: Tejash D. Patel

Filed: December 8, 2000

Art Unit: 3765

For: WACKER CHAPS

Declaration Under Rule 132Commissioner for Patents
Washington, DC 20231

Dear Sir:

William K. Letson, an applicant in the above-identified patent application, declares as follows:

1. That the claimed invention is an apron for protecting the chest, legs, and feet, the apron including a bib, leg panels connected to the bib, and foot covers connected to the leg panels, as recited in the pending claims (the "claimed invention") of the above-identified application.

2. That I have achieved commercial success due to the claimed invention. I have sold approximately three-hundred (300) units of the claimed invention at flea markets and trade shows. These sales solely resulted from displaying the claimed invention and resultant word-of-mouth. I did not advertise the claimed invention prior to or during the flea markets and trade shows.

3. That I have sold approximately two-hundred (200) units of the claimed invention to companies. These companies included landscaping companies that used the claimed invention and provided positive feedback. These companies have successfully used the claimed invention for many different applications and work environments. These sales represent a significant interest on the part of these companies in the claimed invention and a desire to use, produce and market the claimed invention. These sales resulted solely from my displaying the claimed invention to representatives of these

RECEIVED
JAN 08 2004
TECHNOLOGY CENTER R3700

12/29/2003 MON 14:39 FAX

003/003

companies.

4. That the sales described in paragraphs 2 and 3 have taken place in the last three to four years. That during this time period, I have worked a full-time job. Also, since the filing of the present application, I have gone through a lengthy and time-consuming divorce (with the co-inventor) that prevented me from spending substantial time on marketing the claimed invention. Consequently, other than attending the occasional flea market or trade show or meeting with company representatives, I have devoted very little time to selling the claimed invention. As a result, the sales described in paragraphs 2 and 3 resulted solely from the unique and inventive aspects of the claimed invention. These sales show that the public and the marketplace has recognized the importance and uniqueness of the claimed invention.

The declarant further states that the above statements were made with the knowledge that willful false statements and the like are punishable by fine and/or imprisonment, or both, under Section 1001 of Title 18 of the United States Code, and that any such willful false statement may jeopardize the validity of this application or any patent resulting therefrom.

Date: 12/29/03

Signed 
William K. Letson